Gwee Tong Hiang v Boo Cheng Hau

HIGH COURT (JOHOR BAHRU) — CIVIL SUIT NO 23NCC-79–08 OF 2013
TEO SAY ENG J
21 APRIL 2015

Evidence — Hearsay — Admissibility — Whether impugned articles could be admitted in evidence without reporter being called as witness — Whether evidence hearsay

Tort — Defamation — Libel — Articles published in newspapers — Whether impugned articles were defamatory — Defences — Whether defendant entitled to rely on defences — Whether necessary to prove truth of every word of libel — Whether defendant was justified in making impugned statements — Whether defence of fair comment defeated by malice — Whether plaintiff proven his claim for libel — Damages

At all material times both the plaintiff and defendant were political members of the Democratic Action Party of Malaysia ('DAP'). The plaintiff claimed that the defendant had defamed him vide nine newspaper articles, namely articles that were published in four Chinese newspapers, four English newspapers and one Malay newspaper. It was the plaintiff's contention that these nine impugned articles contained defamatory remarks that would ordinarily mean or would be implied to mean, inter alia, that the plaintiff was involved in gangsterism (first allegation), was involved in suspicious property dealings with regard to the purchase of the Muar DAP Service Centre by the party (second allegation), and was not an ideal candidate for the 12th general election (third allegation). The plaintiff thus filed a claim for libel against the defendant for causing serious injuries to the plaintiff's reputation by way of the publication of the nine impugned articles. In his defence the defendant claimed that the statements which were published in the newspapers were protected by the defence of justification and fair comment and that he had not had the malicious intention to defame the plaintiff. It was the defendant's contention that all the nine impugned newspaper articles were premised on one transaction ie the purchase of the Muar DAP Service Centre, which involved the plaintiff and which subsequently gave rise to controversy within the party because of its lack of transparency. According to the defendant certain alleged discrepancies in the conveyancing documents evidencing the sale and purchase of the Muar DAP Service Centre had led to the setting up of an investigation panel by the party to hold an inquiry into the said purchase transaction. The panel had found the plaintiff liable for the highly improper transaction that was

likely to bring the DAP and the party leaders into disrepute. The defendant submitted that as the Chairman of DAP for Johor at the material time it had been his responsibility to ensure that all leaders of the party were honest and transparent in their dealings and that they had not tarnished the image of the party. In the circumstances, the defendant was of the view that when he was confronted by the media with regard to questions posed on current issues such as the purchase of the Muar DAP Service Centre, he had to provide explanations in defence of the party.

Held, dismissing the claim with costs of RM20,000:

(1) In relation to the admissibility of the nine impugned articles, it was clear that all the alleged defamatory remarks in all the impugned articles were not hearsay. This was because, firstly, the reports were published on the statements given by the defendant, who was present in court and thus able to admit or deny if the said statements were actually made by him. Secondly, the defendant had admitted having given such press statements and it was a basic principle of law that what was admitted need not be proved (see para 33).

(2) Having considered the evidence it was clear that the first allegation that the plaintiff was involved in gangsterism was misconceived. The defendant had not said that the plaintiff was involved in gangsterism but that some members from northern Johor could have some gangster background because of his own experiences when attending meetings there. The fact that the plaintiff's photograph and name were published in one of the impugned articles in the *China Press* article was not by itself sufficient to prove that the allegation of gangsterism referred to the plaintiff. This impugned article had raised two allegations, namely one on gangsterism with regards to members of the northern region and the second on the purchase of the Muar DAP Service Centre, which referred to the plaintiff. As such, there was no cogent proof that the first allegation referred to the plaintiff (see paras 39–40 & 42).

(3) As for the second allegation with regard to the purchase of the Muar DAP Service Centre, there was no dispute that these statements were published by the defendant and that they referred to the plaintiff. It was also clear that these impugned statements and the meanings they conveyed or implied to convey were defamatory and would have the effect of lowering the plaintiff in the estimation of the right thinking members of the public in general (see paras 45–47).

(4) Having perused the evidence and the findings of the investigation panel it was clear that the discrepancies highlighted in the purchase of the Muar DAP Service Centre were established. It was also established that the plaintiff was the main person involved in the negotiation and the purchase of the Muar DAP Service Centre. After taking into

consideration the fact that both the plaintiff and defendant were leaders of the DAP and as such public figures and the fact that the purchase of the Muar DAP Service Centre by the party was a matter of public interest and upon perusing the evidence adduced it was clear that the impugned statements that were defamatory were protected by the defences of justification and fair comment. In a plea for justification it was not necessary to prove the truth of every word of the libel as long as the defendant was able to establish the substantial truth of the allegations. In the present case the comments by the defendant were based on facts which had been proven in court and thus the defendant was justified in making such criticisms and comments with regards to the purchase of the Muar DAP Service Centre. Further, the defendant's comments on the purchase of the Muar DAP Service Centre were mainly based on the findings of the investigation panel, and which findings there were no reasons to doubt. The plaintiff was also prevented from alleging that these findings were biased and devoid of fairness, when he had been given the right to be heard at the inquiry and he had not challenged the findings of the panel by appealing to the higher authority of the party. Thus, the defendant had successfully raised the defences of justification and fair comment with regard to statements made against the plaintiff in respect of the second allegation (see paras 50, 53–54 & 56).

(5) The third allegation, which dealt with the plaintiff's suitability as a candidate for the 12th general election, was also defamatory of the plaintiff. However, although defamatory, this third allegation was also protected by the defence of fair comment for the same reasons as the second allegation. In the circumstances the defence of fair comment had been made out by the defendant as regards the third allegation (see paras 56–57).

(6) The defence of fair comment could be defeated by malice. However, in the present case the defendant had made the impugned statements against the plaintiff in the interest of the party and not with any malice. Further, the comments were based on the findings of the investigation panel. As such the plaintiff had failed to prove his claim for libel against the defendant on the balance of probabilities (see paras 58–59).

(7) In the event that the defendant was found liable for libel for the publication of the nine impugned articles, an award of RM80,000 as general damages would be appropriate and adequate (see paras 61–62).

[Bahasa Malaysia summary

Pada setiap masa matan kesua-sua plaintif dan defendan merupakan ahli politik Parti Gerakan Demokratik Malaysia ('DAP'). Plaintif mendakwa bahawa defendan telah memfitnahnya melalui sembilan artikel surat khabar, iaitu artikel-artikel yang diterbitkan dalam empat surat khabar Cina, empat

surat khabar Inggeris dan satu surat khabar Melayu. Ia adalah hujah plaintif bahawa sembilan artikel yang dipersoalkan tersebut mengandungi kenyataan berunsur fitnah yang biasanya bermaksud atau secara tersirat bermaksud, antara lain, yang plaintif terlibat dalam kegiatan gengster ('dakwaan pertama'), terlibat dalam urusan hartanah yang mencurigakan berkenaan belian Pusat Perkhidmatan DAP Muar oleh parti itu ('dakwaan kedua'), dan bukan calon yang ideal untuk pilihanraya umum ke-12 ('dakwaan ketiga'). Plaintif oleh itu telah memfailkan tuntutan untuk fitnah bertulis terhadap defendan kerana menyebabkan kecederaan serius kepada reputasi plaintif melalui penerbitan sembilan artikel yang dipersoalkan itu. Dalam pembelaannya defendan mendakwa bahawa kenyataan-kenyataan itu yang diterbitkan dalam surat khabar-surat khabar itu dilindungi oleh pembelaan justifikasi dan komen adil dan bahawa dia tiada niat buruk untuk memfitnah plaintif. Ia adalah hujah defendan bahawa kesemua sembilan surat khabar yang dipersoalkan itu berasaskan satu transaksi iaitu belian Pusat Perkhidmatan DAP Muar, yang melibatkan plaintif dan yang berikutan itu membawa kepada kontroversi dalam parti itu kerana ketidaktelusannya. Menurut defendan beberapa percanggahan tertentu yang dikatakan dalam dokumen-dokumen konveyansing yang menunjukkan jual beli Pusat Perkhidmatan DAP Muar telah membawa kepada penubuhan panel siasatan oleh parti itu untuk mengadakan siasatan ke atas transaksi belian tersebut. Panel itu mendapati plaintif bertanggungjawab untuk transaksi yang tidak teratur langsung itu yang berkemungkinan menjejaskan reputasi DAP dan pemimpin-pemimpin parti itu. Defendan berhujah bahawa sebagai Pengerusi DAP Johor pada masa matan ia adalah tanggungjawabnya untuk memastikan mereka tidak menjejaskan imej parti itu. Dalam keadaan itu, defendan berpendapat bahawa apabila dia bersemuka dengan pihak media berhubung persoalan-persoalan yang dikemukakan tentang isu-isu seperti belian Pusat Perkhidmatan Muar DAP, dia perlu memberikan penjelasan bagi membela parti itu.

Diputuskan, menolak tuntutan dengan kos RM20,000:

(1) Berhubung kebolehterimaan sembilan artikel yang dipersoalkan itu, ia jelas bahawa kesemua kenyataan berunsur fitnah yang dikatakan itu dalam kesemua artikel yang dipersoalkan itu bukan dengar cakap. Ini dalah kerana, pertama, laporan-laporan itu diterbitkan berdasarkan kenyataan-kenyataan yang diberikan oleh defendan, yang hadir di mahkamah dan oleh itu boleh mengaku atau menfaikan jika kenyataan-kenyataan tersebut sebenarnya telah dibuat olehnya. Kedua, defendan telah mengaku memberikan kenyataan-kenyataan akhbar tersebut dan ia adalah prinsip undang-undang asas bahawa apa yang diakui tidak perlu dibuktikan (lihat perenggan 33).

(2) Setelah mempertimbangkan keterangan ia adalah jelas bahawa dakwaan pertama bahawa plaintif terlibat dalam kegiatan gengster telah disalah anggap. Defendan tidak mengatakan bahawa plaintif terlibat dalam

kegiatan gengster tetapi bahawa beberapa ahli dari utara Johor mungkin mempunyai latar belakang gangster kerana pengalamannya sendiri semasa menghadiri mesyuarat di situ. Fakta bahawa gambar foto dan nama plaintif diterbitkan dalam salah satu daripada artikel yang dipersoalkan itu dalam artikel *China Press* tidak dengan sendirinya mencukupi untuk membukikan bahawa dakwaan kegiatan gengster itu merujuk kepada plaintif. Artikel yang dipersoalkan ini telah menimbulkan dua dakwaan, iaitu satu tentang kegiatan gengster berkenaan ahli-ahli daerah utaran dan kedua tentang belian Pusat Perkhidmatan DAP Muar, yang merujuk kepada pliantif. Oleh itu, tiada bukti yang meyakinkan bahawa dakwaan pertama merujuk kepada plaintif (lihat perenggan 39–40 & 42).

(3) Berhubung dakwaan kedua tentang belian Pusat Perkhidmatan DAP Muar, tiada pertikaian bahawa kenyataan-kenyataan tersebut telah diterbitkan oleh defendan dan bahawa ia merujuk kepada plaintif. Ia juga jelas bahawa kenyataan-kenyataan yang dipersoalkan itu dan maksud yang dibawakan atau tersirat adalah berunsur fitnah dan mempunyai kesan merendahkan plaintif pada pandangan orang awam yang berfikiran waras secara amnya (lihat perenggan 45–47).

(4) Setelah meneliti keterangan dan penemuan panel siasatan itu ia jelas bahawa pertikaian yang dikemukakan dalam belian Pusat Perkhidmatan DAP Muar telah dibuktikan. Ia juga dibuktikan bahawa plaintif merupakan orang utama yang terlibat dalam rundingan dan belian Pusat Perkhidmatan DAP Muar itu. Setelah mengambil kira fakta bahawa kedua-dua plaintif dan defendan merupakan pemimpin-pemimpin DAP dan sebagai orang yang dikenali awam dan fakwa bahawa belian Pusat Perkhidmatan DAP Muar oleh parti itu merupakan perkara yang berkepentingan awam dan setelah meneliti keterangan yang dikemukakan ia adalah jelas bahawa kenyataan-kenyataan yang dipersoalkan itu berunsur fitnah yang dilindungi oleh pembelaan-pembelaan justifikasi dan komen adil. Dalam pli justifikasi ia tidak perlu untuk membuktikan kebenaran tentang setiap perkataan fitnah bertulis itu selagi defendan mampu membuktikan kebenaran substantial dakwaan itu. Dalam kes ini komen-komen oleh defendan adalah berdasarkan fakta yang telah dibuktikan di mahkamah dan oleh itu defendan adalah wajar dalam membuat kritikan dan komen tentang belian Pusat Pekrhidmatan DAP Muar itu. Selanjutnya, komen-komen defendan tentang belian Pusat Pekrhidmatan DAP Muar itu terutamanya berdasarkan penemuan panel siasatan, dan penemuan itu tiada sebab untuk diragukan. Plaintif juga telah dihalang daripada mendakwa bahawa penemuan tersebut bersifat berat sebelah dan tidak adil, apabila dia telah diberikan hak untuk didengar dalam siasatan itu dan dia tidak mencabar penemuan panel itu dengan merayu kepada pihak berkuasa atasan parti itu. Oleh itu, defendan telah berjaya

menimbulkan pembelaan-pembelaan justifikasi dan komen adil berhubung kenyataan-kenyataan yang dibuat terhadap plaintif berkenaan dakwaan kedua itu (lihat perenggan 50, 53–54 & 56).

(5) Dakwaan ketiga, yang berkenaan kesesuaian plaintif sebagai calon untuk pilihanraya umum ke-12, juga berunsur fitnah terhadap plaitif. Walau bagaimanapun, meskipun berunsur fitnah, dakwaan ketiga ini juga dilindungi oleh pembelaan komen adil untuk sebab sama seperti dakwaan kedua. Dalam keadaan itu, pembelaan komen adil telahpun dibuat oleh defendan berkenaan dakwaan ketiga (lihat perenggan 46–47).

(6) Pembelaan komen adil boleh digagalkan oleh niat jahat. Walau bagaimanapun, dalam kes ini defendan telah membuat kenyataan-kenyataan yang dipersoalkan terhadap plaintif demi kepentingan parti itu dan bukan dengan niat jahat. Selanjutnya, komen-komen itu berdasarkan penemuan panel siasatan. Oleh itu plaintif telah gagal membuktikan tuntutannya untuk fitnah bertulis terhadap defendan atas imbangan kebarangkalian (lihat perenggan 58–59).

(7) Sekiranya defendan didapati bertanggungjawab untuk fitnah bertulis kerana menerbitkan sembilan artikel yang dipersoalkan, award RM80,000 sebagai ganti rugi am adalah sesuai dan mencukupi (lihat perenggan 61–62).]

Notes

For cases on admissibility, see 7(2) *Mallal's Digest* (5th Ed, 2015) paras 2097–2105.

For cases on libel, see 12(1) *Mallal's Digest* (5th Ed, 2015) paras 575–793.

Cases referred to

Chew Peng Cheng v Anthony Teo Tiao Gin [2008] 5 MLJ 577; [2008] 8 CLJ 418, HC (refd)

Joshua Benjamin Jeyaretnam v Goh Chok Tong [1989] 3 MLJ 1, PC (refd)

Workers' Party v Tay Boon Too; Workers' Party v Attorney-General [1975] 1 MLJ 47; [1947] 1 LNS 120 (refd)

Legislation referred to

Evidence Act 1950 s 58

Norman Fernandez (C Sukumaran & Co) for the plaintiff.
Ong Kow Meng (KM Ong Lee & Co) for the defendant.

Teo Say Eng J:

THE PLAINTIFF'S CASE AS PER DOCUMENT MARKED C

[1] The plaintiff and the defendant at the material dates, were political members of the Democratic Action Party of Malaysia ('DAP') wherein the plaintiff was holding the position as the Chairman of Bentayan Branch, Muar, whereas the defendant was holding the position as Chairman of DAP in the State of Johor as well as the Chairman of DAP Parliamentary Liason Committee at Gelang Patah, Johor.

[2] Sometime in the year 2008 the defendant started to show signs of dislike and/or prejudice and/or hostility towards the plaintiff.

[3] Thereafter despite the plaintiff being elected as a committee member in the State of Johor, holding the post as publicity secretary initially, the defendant had initiated and embarked on a plot and/or scheme since the early days of 2008 and even earlier, inter alia, convincing and/or instigating other members so as to ultimately eradicate and destroy the plaintiff savagely in his political career and making very sure that the plaintiff would not be able to survive the onslaught launched maliciously by the defendant. As for the defendant, the plaintiff was an 'exploit' and/or a tool of the other camp, hence obviously indulging in factionalism in the party.

[4] In order to execute the defendant's plan perfectly, the first step was to remove the plaintiff from the state AJK by instigating others, inter alia, casting a vote of no confidence against him. Ultimately the plaintiff was deliberately ousted by the defendant and his cronies from the state AJK. They were also attacking his candidacy in the 12th general election held on 8 March 2008.

[5] Nonetheless to the dislike of the defendant and his cronies, the plaintiff was elected as a State Assemblyman for the constituency of Bentayan on 8 March 2008. The plaintiff had held office successfully without any problem with anybody except the defendant's camp which was all out to damage plaintiff's image and to destroy his political future further.

[6] Nonetheless the defendant was still unimpressed with the defendant's ascendency to his elected position and had been showing utmost animosity and even hatred towards the plaintiff. The defendant had spared the plaintiff no breathing space at all as subsequently the defendant this time round had embarked onto another even more vicious action by, inter alia, branding the plaintiff as corrupt, fraudulent, cheat, scam and a person without any integrity and/or without any thrust-worthiness and/or without any moral value.

[7] The defendant managed to capture and/or capitalise on an opportunity pursuant to the purchase of the Muar DAP Service Center ('the said property'). The defendant had discovered certain discrepancies in the so-called declared purchase price and that of what was stated in the transfer-form ('Borang 14A'), bearing in mind the defendant being a doctor by profession, nevertheless attempted to act like a learned judge by concluding that there was fraud and/or cheating and/or corruption and/or breach of trust and/or irregularities in the so-called improper transaction when in reality there was none. These had ultimately culminated in extreme public media attack on the plaintiff by the defendant beyond any element of fairness and/or decency, especially so the plaintiff and the defendant were still political comrades of the same party and also as incumbents, serving the office as elected representatives between 8 March 2008 and 5 May 2013 (date of the 13th GE).

[8] The defendant instigated and/or incited a few of the party members in Muar who were not happy with the plaintiff, headed by a person named Ng Ka Kit. Documents pursuant to the sales transaction of the said property were extracted. Under the directive of the defendant, Ng Ka Kit with a handful of complainants had forwarded the first complaint to the Disciplinary Board of Pusat DAP, Kuala Lumpur, culminating in the first round of enquiry conducted by a panel of three (3) AJK members as directed by the defendant. Upon full enquiry, the finding was that there were no elements and/or proof of so-called fraud and/or corruption and/or cheating and/or breach of trust and/or irregularity and/or improper conduct done by the plaintiff and his colleagues collectively. Evidence was abundant to show everything done was in order, inclusive of statutory declaration made and all conveyancing documentations undertaken by the solicitor, namely Lim Sey Wee. Incidentally at that material date there was also a AJK member of the state who had confirmed everything was done in good faith and in order.

[9] Nonetheless being not satisfied with the finding by the three (3) men committee and in order to savagely and maliciously finish-off the plaintiff completely beyond redemption, this time around the defendant had instigated his powerful colleagues in Kuala Lumpur who are on the defendant's side, inter-alia, procuring a five (5) men committee as a fresh panel to further investigate the matter, culminating in a finding not favourable to the plaintiff. Nonetheless nothing was proven of any element of criminal guilt in the plaintiff, other than describing the transaction being highly improper and the same was reverted back to the AJK, State of Johor headed by the defendant to take appropriate action. Nonetheless until to-date, no action whatsoever was taken by AJK State of Johor and/or CEC insofar as the so-called controversial improper transaction was concerned.

[10] As a matter of fact when the plaintiff was faced with such a merciless

onslaught and attack from the defendant pursuant to the said transaction of the said property, the important witness being the conveyancing lawyer, Lim Sey Wee, initially came into the fore-front via press statement and other similar explanation to the central leadership, reaffirming and/or confirming that all procedures and/or law were complied with without any element of wrong-doing by the plaintiff and himself. The irony being, every conveyancing step from the initial payment of 10% of the purchase price that is, payment of RM25,000 to Madam Lim Ah Teng was perfectly conducted by Lim Sey Wee which the plaintiff had no say or power to differ and/or dictate what and how the same must be done. Why then until today no enquiry and/or investigation was done on Lim Sey Wee, is everybody's guess? Lim Sey Wee out of humiliation and/or pressure had tendered his resignation from (terminated as a member of) the party but thereafter had joined back for reasons best known to him as he was coerced and/or pressured by the cunning defendant to go on a campaign against the plaintiff.

[11] Upon pressure of the defendant on Lim Sey Wee who was forced eventually to side with the defendant as the defendant had been the state DAP chairman with lot of power and influence being able even to influence the press who would at times dance to his tuning. Subsequently Lim Sey Wee had resorted to remaining silent pursuant to the continued onslaught of the defendant against the plaintiff. Lim Sey Wee had unreservedly confirmed, inter alia, no evidence whatsoever of any irregularities ever committed either by him and the plaintiff in the aforesaid transaction.

[12] Meanwhile in order to protect and/or upon the plaintiff's integrity and/or honour and/or reputation and/or name, be it in his official capacity as an elected representative of the people as well as his personal capacity, the plaintiff had filed a civil action in Muar Sessions Court against the so-called 17 or 18 tort-feasors for sending a malicious letter of complaint, inter alia, attacking the plaintiff's integrity and/or credibility and/or personality. Despite the failure, the plaintiff was unmoved especially eventually being faced with an aftermath of the defendant's constant attack, inter alia, to attain a hopeless prospect of the plaintiff standing for another term as an incumbent in the 13th GE, hence the plaintiff had no choice but to commence this action against the defendant for causing and/or resulting and/or destroying the plaintiff's hope of further serving the rakyat as an elected representative as well as for defaming and/or disparaging the plaintiff to the utmost as an unblemished personality.

[13] Due to the defendant's ingenuity and smartness in playing sleazy gutter and dirty politics, sometime in the middle of year 2009, the defendant adopted an effective move to destroy further the plaintiff's character, exploiting the issue of the so-called purchase of the said property in Muar by calling for a press conference unilaterally, initially confining within the *Chinese Press* and

thereafter including the English as well as *Malay Press* so as to leave no stones unturned in order to once and for all eradicate his only eye-sore and/or thorn in the flesh, failing which his ego and/or ambition may not be served well and the same was also intended to send a strong signal to his political foes and/or adversaries.

[14] The plaintiff alleged that the defendant had defamed him vide nine newspapers articles which are the subject matter of this suit which are found in paras 9(a), 9(b), 9(c) and 9(d) ('the Chinese newspapers') and paras 10(a), 10(b), 10(c) and 10(d) ('English newspapers') and para 11(a) '(Malay newspapers') (on pp 7 to 78 of the statement of claim) and the offensive and/or defamatory words and/or its contents are found in paras 9(A), 9(B), 9(C), 9(D), 10(A), 10(B), 10(C), 10(D) and 11(A) respectively.

[15] The plaintiff takes the position that even by a literary meaning of the words used, inter alia, describing in detail of the plaintiff being involved in gangsterism and/or corruption and/or cheating and/or fraud and/or breach of trust and/or without integrity and/or morale and/or trust, are words that are so clear, unequivocal and unambiguous that whichever reader reads the content contained therein must have wrongfully believed the truth of what had been subscribed to the plaintiff and not anybody else in the estimation of right-thinking members of society. By such media attack (libel) coupled with public speeches and/or within the party circle as well as outside and/or via communication through public rallies, dinner functions, party meetings, dialogues and/or other social and political functions undertaken by the defendant and/or his cronies, the defendant succeeded finally in ousting the plaintiff as the candidate to stand for another term in the 13th GE.

[16] By the defendant's aforesaid action, the defendant should be liable to have caused serious injuries to the plaintiff's reputation in connection with the profession, trade, business held or carried on by him at the date of publication and thereafter. The defendant is currently jobless due to such impact of character assassination by the defendant.

[17] The defendant is not only liable for causing a libel against the plaintiff, nonetheless the defendant is also liable for creating slander which is actionable per se for an allegation that the plaintiff has been guilty of a criminal offence punishable by imprisonment.

[18] Obviously the plaintiff's reputation has been seriously tarnished and/or injured for which the plaintiff is claiming various damages as per prayers 17(a) to (h) in the statement of claim.

THE DEFENDANT'S CASE AS PER DOCUMENT MARKED H

[19] The defendant contended that all the nine impugned newspaper articles are premised on one main transaction, that is, the purchase of the Muar DAP Service Centre ('the said transaction') which involved the plaintiff was not done transparently which had subsequently caused the controversy within the DAP party ('the party').

[20] Arising from the said transaction, complaints against the plaintiff were lodged by members of the party to the DAP State Committee and the headquarters of the party ('HQ').

[21] The HQ of the party had set up an investigation panel headed by one Dr Tan Seng Giaw together with four other panel members which had concluded an enquiry attended by several witnesses including the plaintiff on 23 September 2007. On 17 January 2008 the investigation panel had reached a decision after hearing the witnesses. The decision is produced as follows:

> 35 Sdr Gwee Tong Hian being the main person involved in the negotiation and subsequent giving instruction to Sdr Lim Sey Wee should be held liable for this highly improper transaction that would bring the party and party leaders into disrepute ...

[22] Not being satisfied with the decision of the investigation panel, the plaintiff had filed a civil suit in the Muar Sessions Court vide summons No 52–533 of 2007 against 17 members of DAP from Muar for having written and published some defamatory letters against the plaintiff pertaining to the purchase of the Muar Service Centre. The suit was dismissed with cost by the Muar Sessions Court judge where the learned sessions court judge had this to say about the plaintiff's involvement in the said transaction:

> Walaupun plaintif dan Lim Ah Tang sendiri mengatakan Lim Ah Tang adalah penjual bangunan tersebut, tetapi ada dokumen atau pun resit yang menunjukkan Lim Ah Tang telah menerima RM25,000 tersebut sebagai 'komisyen'. Plaintif adalah orang utama yang bertanggungjawab untuk berunding, membeli, memberi arahan kepada peguam yang menguruskan pembelian bangunan tersebut dan mengeluarkan cek untuk membayar RM25,000 kepada Lim Ah Tang.
>
> Maka dengan ini bermakna dakwaan terhadap plaintif bahawa plaintif telah terima rasuah, penyelewengan dalam pembelian sebuah bangunan DAP dan bahawa plaintif bersama Lim Sey Wee telah menipu dan menggelapkan wang parti adalah berasas dan bukannya satu fitnah terhadap plaintif.

The plaintiff appealed against the decision of the Muar Sessions Court judge to the High Court was dismissed with cost vide No 12B-19 of 2011 on 23 November 2011.

[23] The defendant at the material time was the DAP chairman for the State of Johor and a state assemblyman for the constituency of Skudai (till to date) and the head of the opposition in the Johor State Assembly (till to date).

[24] As the Chairman of DAP for Johor and as a political leader, the defendant had the responsibility to ensure that all leaders and State Assemblymen of DAP did not abuse their power and are of high integrity, trustworthy, honest and transparent.

Apart from the above, the defendant was of the view that he is accountable to the party and the society as a whole including the constituents to ensure that whatever was done by any DAP State Assemblyman or DAP leader would not tarnish the image of DAP and cause controversy and prejudice to the party.

[25] As the chairman of the party for the state of Johor, the defendant was always confronted by the media with regard to questions posed on the current issues concerning the party which he could not avoid but to give some explanations.

[26] The defendant claims that whatever statements which were published in the newspapers are protected by the defence of justification, fair comment and the defendant did not have the intention (malice) to defame the plaintiff.

[27] Whatever injuries or damage which was alleged to have been caused to the plaintiff's reputation was due to the plaintiff's own doing.

BACKGROUND FACTS

[28] The plaintiff has called 25 witnesses to prove his claim whereas the defendant has called eight witnesses to establish his defence.

THE LAW ON DEFAMATION

[29] In any suit for defamation with regards to articles published in newspapers, the broad issues for determination are:

(a) whether the impugned articles are defamatory;

(b) whether the defendant is entitled to rely on the defences of justification, fair comment or qualified privilege;

(c) if the defendant was liable for defamation, what are damages the plaintiff is entitled.

[30] The court shall determine the aforesaid issues based on the evidence established by the respective parties.

WHAT ARE THE ALLEGED DEFAMATORY REMARKS IN THE NINE IMPUGNED ARTICLES?

[31] The plaintiff sued the defendant for libel premised on the various press statements which the defendant had issued and caused to be published in the nine impugned articles. The plaintiff had pleaded the particulars in all the nine impugned articles in his statement of claim which were alleged to be defamatory of the plaintiff namely:

1) Para 9A of the Statement of Claim – excerpts from the 1st article from the China Press Report dated 28 July 2009.

2) Para 9B of the Statement of Claim – excerpts from the 2nd article from Nanyang Siang Pau dated 28 July 2009.

3) Para 9C of the Statement of Claim – excerpts from the 3rd article from Guan Ming Daily dated 23.2.2008.

4) Para 9D of the Statement of Claim – excerpts from the 4th article from Sin Chew Daily dated 23.8.2008.

5) Para 10A of the Statement of Claim – excerpts from the 5th article from New Straits Time dated 28 July 2009.

6) Para 10B of the Statement of Claim – excerpts from the 6th article from New Straits Time Report dated 29 July 2009.

7) Para 10C of the Statement of Claim – excerpts from the 7th article from the Star Report dated 28 July 2009.

8) Para 10D of the Statement of Claim – excerpts from the 8th article from the Star Report dated 30 July 2009.

9) Para 11A of the Statement of Claim – excerpts from the 9th article from Utusan Malaysia Report dated 28 July 2009.

[32] The plaintiff contends that the aforesaid paras in all the nine impugned articles in their natural and ordinary meaning would mean or had implied to mean the following:

(a) the plaintiff was involved in gangsterism;

(b) the plaintiff was involved in shady and suspicious property dealings, that is, the purchase of the Muar DAP Service Centre, ('Bangunan DAP');

(c) the plaintiff had committed an offence and police report was lodged and the plaintiff was investigated by MACC; and

(d) the plaintiff was not an ideal candidate in the general election as he was a man without integrity and his character was questionable being involved in corruption and or misappropriation of fund or cheating or

impropriety or malpractice etcetera and was in breach of the party constitution

PRELIMINARY ISSUE

Whether all the alleged defamatory remarks in all the 9 impugned articles were admissible in evidence?

[33] The defendant submits that the said articles should not be admissible as they were written by the reporters based on various sources and those articles where the reporters were not called should not be admissible in evidence. Having heard the evidence adduced, I rule that all the alleged defamatory remarks published in all the nine impugned articles are not hearsay but admissible for two reasons: the first reason is that the reports were published based on the statements given by the defendant who was in court as the defendant of the case and who was in a position to deny if such statements were not made by him. Secondly, the defendant had admitted having given such press statements. The basic principle is that what is admitted need not be proved (s 58 of the Evidence Act 1950).

ISSUES FOR DETERMINATION AND RULINGS OF THE COURT

The law

[34] It is trite that in any suit for libel, the burden of proof is on the plaintiff to prove on the balance of probabilities that:

(a) the words alleged were defamatory;

(b) the words referred to the plaintiff; and

(c) the words were published.

[35] The tests which have been adopted by our courts in determining whether the alleged statements are defamatory are as follows:

(a) whether the statement be it libel or slander in its natural and ordinary meaning and or by way of innuendoes did convey the meaning that:

(i) would expose the plaintiff to hatred, ridicule or contempt;

(ii) would tend to lower the plaintiff in the estimation of the right thinking members of the public generally:

see, *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor* [1973] 2 MLJ 56 at p 58; *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393; [1995] 1 LNS 304; *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd*

[1999] 1 MLJ 461 at p 461; [1999] 1 CLJ 461 at p 467; *Sim v Stretch* [1936] 2 All ER 1237; (1936) 52 TLR 669.

THE FIRST ALLEGATION WITH REGARD TO GANGSTERISM

The plaintiff's submission

[36] The plaintiff submits that it has been established during the trial that the defendant had issued the following statements with regard to gangsterism vide the first impugned article in the *China Press* dated 28 July 2009:

i Pengerusi DAP Negeri Johor mendedahkan bahawa beliau pernah diugut oleh kongsi gelap dan telah dihalang dengan menggunakan kekerasan menghalang beliau mengendali urusan parti Johor Utara, beliau juga diserang oleh ahli parti dan juga orang luar, memfitnahkan beliau sebagai 'kaki anti-pusat.

ii Beliau menyatakan bahawa Johor Utara telah disuspek terdapat ahli parti yang mempunyai latar belakang kongsi gelap. Semasa beliau menghadiri mesyuarat di Johor Utara, telah dihalang dengan kekerasan.

iii ... ini adalah kawasan saya, saya tidak mahu awak datang, awak adalah pengerusi negeri, awak jaga kawasan awak, jangan campur tangan hal kawasan lain.

iv ... beliau masih belum hendak membuat laporan polis.

v Beliau tidak berharap ada orang yang sengaja menggunakan kuasa kongsi gelap untuk menyertai parti DAP.

vi 'MENOLAK 'POLITIK EMAS HITAM – POLITIK YANG DITERAP DENGAN BANTUAN KEWANGAN KONGSI GELAP.

[37] The plaintiff submits that the alleged statements with regard to gangsterism although do not directly point to the plaintiff but would be understood by the general public who read the said newspaper article to mean that the plaintiff was involved in gangsterism for two reasons:

(a) all the electorates in the Muar region knew about the animosity and row between the plaintiff and the defendant; and

(b) the photograph and name of the plaintiff were also published in the said impugned article.

The defendant's submission

[38] The defendant submits that nowhere in the first impugned article in the *China Press* dated 28 July 2009 with regard to gangsetrism referred to the plaintiff. The defendant merely told the reporter in the press conference that he was threatened by gangsters in the northern Johor and he suspected that

A northern Johor was having members with gangster background. He further said that he hoped that no one would join the party by using violence of secret society. The defendant submits that such press statements given should not be interpreted to mean the defendant was referring to the plaintiff. Neither could it be said that there was an innuendo arising from the said press statements that
B the plaintiff was involved in gangsterism.

RULING OF THE COURT

C **[39]** Having heard the submissions by both the parties, I find that the plaintiff's submission that the alleged statements had implied that the plaintiff was involved in gangsterism is misconceived. First, the defendant did not say in the alleged press statements that the plaintiff was involved in gangsterism. What the defendant alleged was that some members from the northern Johor could have some gangster background because of his own encounter in that
D region when he attended the meeting there.

[40] As regards the plaintiff's photograph and his name which were published in the *China Press* article, I find that, that by itself is not sufficient to
E prove that the allegation of gangsterism referred to the plaintiff simply because the said article had raised two allegations: one on gangsterism which clearly refers to certain members of the northern region whereas the second allegation on the purchase of Muar DAP Service Centre which clearly referred to the plaintiff.

F **[41]** I agree that to accuse someone being involved in gangsterism is defamatory in that such words would tend to lower that person in the estimation of the right thinking members of the public in general.

G **[42]** However in this case, I find that there is no cogent proof that the alleged statements referred to the plaintiff.

[43] Even if I was wrong in so holding, the alleged statements had by innuendo referred to the plaintiff.

H

[44] I am still of the considered view that the plaintiff was justified in making such statements based on his own personal encounter when he attended a meeting in the said northern region.

I SECOND ALLEGATION WITH REGARD TO THE PURCHASE OF THE MUAR DAP SERVICE CENTRE

[45] Whether the impugned statements with regard to the purchase of the Muar DAP Service Centre had conveyed the meaning or had implied that:

(a) the plaintiff was involved in shady and suspicious property dealings;

(b) the plaintiff was without integrity;

(c) the plaintiff was involved in corruption and or mis appropriation and or cheating and or impropriety and or malpractice etc; and

(d) that the plaintiff had committed a crime and was investigated as submitted by the plaintiff.

[46] Since it is not in dispute that the impugned statements with regard to the purchase of the Muar DAP Service Centre were published by the defendant and the impugned statements referred to the plaintiff, the sole question is whether the impugned statements were defamatory. For convenience, I shall reproduce the main relevant excerpts of the defendant's statements with regard to the purchase of the Muar DAP Service Centre as follows:

(a) Defendant was the mastermind in the said transaction, responsible to collect and arrange, he must be responsible in this affair.

(b) A lot of members felt suspicious as regards the building that was purchased because it involves a Bumiputra Unit, why the purchaser was a Singaporean lady and she could take the profit of RM25,000.00 Defendant said the transaction was not proper and full of suspicion.

when we think of that transaction of RM300,000.00 taking commission of 8%. If it involved RM3 million, then it would become RM250K. If we form the government, can we allow such thing to happen?.

(c) The defendant said in the said transaction that the plaintiff mentioned that he had given RM25,000.00 as commission to a Singaporean lady as the original purchaser.

(d) People who committed an offence always attacked him and also opposed the State Committee? Where was the integrity of the party?.

(e) He said there had been questions over the price of the property with figure of between 275K and 300K being stated and payment of RM25K to an agent. It also querried the land status of the property.

(f) The MACC was investigating the alleged discrepancies involving the purchase of the Muar DAP Service Centre following a disclosure made by a party leader Dr Bo Cheng Hau on Monday.

(g) That Dr Boo had said that in a press conference on Monday that a DAP inquiry into the purchase price of RM300K Service Centre revealed conflicting price.

(h) That Dr Boo added that the inquiry was told that the property was valued at RM275K when it was bought in 2004 but the amount had increased to RM290K in 2007.

[47] Having perused the impugned statements and the meanings that they conveyed or implied to convey and having heard the submissions by both the plaintiff and the defendant, I find that they are defamatory and would have the effect of lowering the plaintiff in the estimation of the right thinking members of the public in general.

THE NEXT ISSUE IS WHETHER THE DEFENDANT WAS PROTECTED BY THE DEFENCES OF JUSTIFICATION AND FAIR COMMENT AS PLEADED IN HIS DEFENCE

[48] To plead the defence of justification the defendant must prove the following elements:

(a) the defamatory imputation is true; (b) justify the precise imputation complained of; and (c) prove the truth of all material statements in the libel. There must be substantial justification of the whole libel, However, it is not necessary to prove the truth of every word of the libel (see *Workers' Party v Tay Boon Too; Workers' Party v Attorney-General* [1975] 1 MLJ 47; [1947] 1 LNS 120). Further it is not necessary to prove the truth of every charge if the words not proved to be true do not materially injure the plaintiff's reputation, having regard to the truth of the remaining charges, see *Chew Peng Cheng v Anthony Teo Tiao Gin* [2008] 5 MLJ 577; [2008] 8 CLJ 418.

[49] Whereas the defence of fair comment has been laid down in the Privy Council case of *Joshua Benjamin Jeyaretnam v Goh Chok Tong* [1989] 3 MLJ 1 as follows:

(a) the words complained of are comments, although they may consist or include inference of fact;

(b) the comment is on a matter of public interest;

(c) the comment is based on facts; and

(d) the comment is one which a fair minded person can honestly make on the facts proved.

[50] Having perused the evidence adduced by the defendant, I am satisfied that the following facts have been established:

(a) the plaintiff was the main person involved in the negotiation and the purchase of the Muar DAP Service Centre;

(b) the purchase price was reported by the plaintiff to the memband the DAP Johor Committee members and the secretary general of the party and stated in the minutes of the DAP meeting in Muar as RM300,000;

(c) it was later discovered that the said service centre was actually purchased

for the price of RM275,000 and RM25,000 was given to one Singaporean by the name of Lim Ah Tang who was alleged to be the vendor as commission. This was confirmed by Lim Ah Tang herself as a witness ('SP13') and Lim Sey Wee ('SP15') the solicitor who handled the sale transaction;

(d) a complaint to the central executive committee of the DAP regarding the controversial purchase price of the Muar DAP Service Centre which was said to be RM300,000 was made by a member of the party by the name of See Kah Kit ('DW2');

(e) as a result of the complaint a panel headed by Dr Tan Seng Giaw ('DW1') was appointed to enquire into the said transaction. This enquiry was attended by the plaintiff himself. During the enquiry, Dr Tan ('DW1') testified that the minutes of the meeting of DAP Muar shows that Muar DAP had agreed to purchase the DAP Building for RM300,000. This was reported to DAP Johor. However the panel found that the purchase price was actually RM275,000 with RM25,000 which was paid to one Lim Ah Tang as the vendor. No evidence whether oral or documentary was led that DAP Muar had been told that RM25,000 was required to be paid to Lim Ah Tang as commission. No reason was given by the plaintiff as to why this fact was withheld. At the end of the enquiry the panel had come to the following findings:

> Sdr Gwee Tong Hau being the main person involved in the negotiation and subsequent giving instruction to Sdr Lim Sey Wee should be held liable for the highly improper transaction that would bring the property and party leaders into disrepute.

(f) the learned Muar Sessions Court judge vide case No 52–553 of 2007 on 27 January 2011 had dismissed with cost a defamation suit pertaining to the purchase of the same DAP Muar Building brought by the same plaintiff against 17 DAP members. The following are the findings of the learned sessions court judge:

> walaupun plaintif dan Lim Ah Tang sendiri mengatakan Lim Ah Tang adalah penjual bangungan tersebut, tetapi ada dokumen ataupun resit yang menunjukkan Lim Ah Tang telah menerima RM25,000 tersebut sebagai 'komisyen'.
>
> Plaintif adalah orang utama yang bertanggungjawab untuk berunding, membeli, memberi arahan kepada peguam yang menguruskan pembelian bangunan tersebut dan mengeluarkan cek untuk membayar RM25,000 kepada Lim Ah tang.
>
> maka dengan ini bermakna dakwaan terhadap plaintif bahawa plaintif terima rasuah, menyeleweng dalam pembelian sebuah bangunan DAP dan bahawa plaintif bersama Lim Sey Wee telah menipu dan menggelapkan wang parti adalah berasas dan bukannya satu fitnah terhadap plaintif.

A (g) it is also not in dispute that MACC is investigating into the purchase of the Muar DAP Service Centre.

[51] Based on the aforesaid factual situations except (f), the defendant as the then Chairman of the Johore DAP had released several press statements in answering questions posed by the reporters over a period of time which has resulted in the publication of the nine impugned articles which constitute the subject matters of this defamation suit.

C RULING OF THE COURT

[52] In determining whether the defences of justification and fair comment would succeed in a suit of libel, the court has to bear in mind the following facts which are not in dispute:

D (a) both the plaintiff and the defendant are leaders of DAP and holding important offices in society and are public figures so to speak;

(b) the purchase of the Muar DAP Service Centre by the party is a matter of public interest; and

E (c) the alleged defamatory remarks are actually criticisms and comments by the defendant with regards to the transparency of the purchase of the Muar DAP Service Centre by the plaintiff who was a public figure and his accountability to the party of the said purchase.

F **[53]** Having perused the evidence adduced by both the parties, I find that the impugned statements which were held to be defamatory are protected by the defences of justification and fair comment for the following reasons:

G (a) in a plea for justification, it is not necessary to prove the truth of every word of the libel. I am satisfied that the defendant had established the substantial truth of the allegations made namely:

(i) the plaintiff was the main person involved in the purchase of the Muar DAP Service Centre;

H (ii) the initial price of the Muar DAP Service Centre was stated to be RM300,000;

(iii) the actual purchase price of the Muar DAP Service Centre (RM275,000) and the payment of commission of RM25,000 to I one Lim ah Tong were not disclosed to the party and were later discovered by the Investigation panel conducted by five men panel headed by Dr Tan Seng Giaw as follows:

purchase price: RM275,000.

commission of RM25,000 was paid to one Singaporean lady by the name of Lim Ah Tang as vendor.

(iv) the investigation panel found that the plaintiff should be held liable for the highly improper transaction that would bring the party and the party leaders into disrepute;

(v) as a result, the plaintiff was investigated by MACC;

(b) the comments by the defendant are based on facts which have been proven in court;

(c) the defendant was justified in making such criticism and comments with regards to the purchase of the said Muar DAP Service Centre because:

(i) the purchase of the said property is clearly a matter of public interest; and

(ii) the plaintiff being a DAP leader and a public figure who was not only accountable to the party for the said purchase but must also act transparently. Likewise the defendant, being the then DAP Chairman for the state of Johor and also a public figure had a duty to ensure that the plaintiff being a state assemblyman was transparent and accountable to the party in whatever that he did;

(d) what is more important here is that the defendant's criticisms and comments on the purchase of the said property by the plaintiff is mainly based on the findings of the investigation panel appointed by the party to look into the complaints made by members of the party. The court has no reasons to doubt the findings made by the panel at the end of the enquiry for the following reasons:

(i) the investigation panel which was headed by one Dr Tan Seng Giaw is a man of high integrity. The said panel had conducted a full enquiry by calling all the witnesses involved including the plaintiff;

(ii) I find that the plaintiff's allegation that the five men investigation panel were on the defendant's side and its findings were extremely biased and devoid of fairness is without merit for the following reasons:

(1) the plaintiff was given the right to be heard during the inquiry. It would appear that he did not raise any objection against any of the panel member during the inquiry; and

(2) the plaintiff did not challenge the findings of the investigation panel by appealing to the higher authority of the party. The plaintiff cannot now allege that the findings of the five men panel were biased and devoid of fairness.

(iii) the findings of the investigation panel as regards the purchase of Muar DAP Service Centre were found to be consistent with the findings of the Muar Sessions Court Judge given after a full trial on

A

27 January 2011 in a subsequent defamation suit (Case No 53–553 of 2007) filed by the plaintiff against 17 DAP members with regard to an alleged malicious letter of complaint attacking the plaintiff's integrity in the purchase of the Muar DAP Service Centre. The sessions court judge had dismissed the suit with cost and the plaintiff's appeal was also dismissed by the High Court subsequently.

B

(e) last but not least I also find that the criticisms and comments made by the defendant are one which a fair minded person can honestly make on the facts proved.

C

[54] For the above reasons I find that the defendant has successfully raised the defences justification and fair comment with regard to the statements made against the plaintiff in respect of the purchase of the Muar DAP Service Centre.

D

ON THE ISSUE THAT THE PLAINTIFF WAS NOT A SUITABLE CANDIDATE IN THE GENERAL ELECTION AS HIS CHARACTER WAS QUESTIONABLE DESPITE BEING NOMINATED BY THE PARTY CEC DURING THE 12TH GENERAL ELECTION

E

[55] The following are the relevant excerpts of the impugned statements made by the defendant with regard to character of the plaintiff as a candidate for the 12th general elections.

F

Gwee Tong Hian was in involved in the case taking commission for DAP Building and the case was surrendered to the disciplinary committee for taking action, he wasn't the ideal candidate but nevertheless central leadership still nominated him.

Central leadership shouldn't by right have fielded a controversial candidate to stand election, Defendant emphasized that if there was any problem fielding Gwee Tong Hian as candidate, state leadership shouldn't take responsible from points of law or politics on Plaintiff.

G

Muar DAP Service Centre once again arises problem. Due to not being satisfied with the central leadership which had not taken any action though 5 men panel report was announced 1 year ago Muar DAP members lodged report to SPRM.

H

Member lodged report to Batu Pahat SPRM by delivering 5 men panel report to SPRM.

He said he believed the way the agent and assemblyman Gwee Tong Hian dealt with the sale of the building was questionable.

I

How can a Singaporean sell a building to the party while Gwee Tong Hian never approached the party state committee for approval?

It shows that he (Gwee) does not have integrity and does that uphold the principles of the party.

... adding that it was not proper to oppose and condemn the BN when someone within the party does improper dealing.' 'Dr. Boo justified his call for Gwee's resignation by stating that the integrity of a leader is questionable when he or she is involved in shady dealings.

that Dr Boo demanded that Bentayan assemblyman Gwee resign allege that the manner in which the latter buying to DAP Service Centre in Muar was improper and questionable.

Beliau berkata Tong Hiang juga merupakan individu yang sering menentang dasar yang ditetapkan jawatankuasa parti negeri dan ia tidak baik untuk parti.

[56] Having perused the excerpts that is, the impugned statements made by the defendant with regard to the plaintiff's character as suitable candidate for the 12th general election, I am of the view that such statements are defamatory of the plaintiff. However, I am of the considered view that such statements are the defendant's fair comments based on facts established above and are protected by the defence of fair comment for the same reasons aforesaid given in respect of the second allegation.

[57] In the circumstances, I ruled that the defence of fair comment as regards the third allegation has been made out by the defendant.

ON THE ISSUE OF MALICE

[58] Once the defence of fair comment is made out, it can be defeated by malice. Having considered the evidence adduced, I find that the defendant had made the impugned press statements as against the plaintiff in the interest of the party. As the then DAP Chairman for the state of Johor he has a duty to ensure that all the DAP leaders under him are transparent, and accountable in whatever that they do. I do not find any malice on the conduct of the defendant in releasing the impugned statements. What is more important to take note of is that his comments be it comments or facts are based on one important findings by the investigation panel headed by Dr Tan Seng Giaw of the party (DW1) which were consistent with the findings of the learned sessions court judge in a defamation suit brought by the plaintiff against the 17 members of DAP pertaining to the same purchase transaction in which the plaintiff was the main person involved.

DECISION ON LIABILITY

[59] For the above reasons, I find that the plaintiff has failed to prove his claim for libel against the defendant on the balance of probabilities.

[60] I therefore dismissed the plaintiff's claim with cost of RM20,000.

A DECISION ON QUANTUM

[61] For completeness, even if I was wrong in so holding with regard to liability, I shall proceed to assess damages to be awarded on the assumption that the defendant was liable for libel for the publication of the nine impugned articles.

B

[62] After considering the authorities concerning the award of damages for libel on public figures, I am of the view that an award of RM80,000 as general damages for libel is appropriate and adequate in this case having taken into account:

C

(a) the gravity of the allegation;

(b) the size and influence of the circulation;

D (c) the effect of the publications;

(d) the extent and nature of the plaintiff's reputation;

(e) the behaviour of the defendant; and

(f) the behaviour of the plaintiff.

E

[63] The claim for special damages was not allowed as it was not pleaded. Exemplary damages is also not allowed as no malice was proven.

F *Plaintiff's claim dismissed with costs of RM20,000.*

Reported by Kohila Nesan

G

H

I